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|------------------------------------|---|-------------------|
| In re Application of | : | |
| JANUSZ, Marin <i>et al</i> | : | |
| Application No.: 09/269,845 | : | DECISION |
| PCT No.: PCT/GB97/02721 | : | ON PAPERS |
| Int. Filing Date: 03 October 1997 | : | SUBMITTED |
| Priority Date: 03 October 1996 | : | UNDER 37 CFR 1.42 |
| Attorney Docket No.: AAT-11612 | : | |
| For: COLOSTRININ, AND USES THEREOF | : | |

This communication is in response to applicants' "Response to Notification of Missing Requirements" submitted 24 September 1999, which has been treated as a request for acceptance of the application under 37 CFR 1.42.

BACKGROUND

On 25 May 1999, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the declaration later than thirty months from the earliest claimed priority date in accordance with 37 CFR 1.492(e) was required.

On 24 September 1999, applicants filed a declaration signed by Marin Janusz, Jozéf Lisowski, and Mieczyslaw Inglot, as heir and executor for deceased inventor, Anna Dubowska-Inglot which was accompanied with, *inter alia*, a petition and fee for a 3-month extension of time, an assignment and fee, and the surcharge required by 37 CFR 1.492(e).

DISCUSSION

Declaration Signed by Legal Representative

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

In the instant petition, applicants have furnished a declaration signed by Mieczyslaw Inglot, as "heir and executor for Anna Dubowska-Inglot, deceased." No further documentation is required at this time.

Accordingly, the declaration is acceptable under 37 CFR 1.42.

Proof of Authority

A review of the application file reveals that papers have not been filed properly establishing the proof of authority of the legal representative. 37 CFR 1.44 *Proof of authority*, states, in part:

In the cases mentioned in Section 1.42 and 1.43, proof of the power or authority of the legal representative must be recorded in the Patent and Trademark Office or filed in the application before the grant of a patent.

Additionally, section 409.01(b), *Proof of Authority of Administrator or Executor*, of the Manual of Patent Examining Procedure (MPEP) states, in part:

[P]roof of the authority of such executor or administrator should in all cases be made of record in the Patent and Trademark Office by filing in the application or recording in the assignment records a certificate of the clerk of a competent court or the register of wills that his or her appointment is still in full force and effect. Such certificate shall be signed by an officer and authenticated by the seal of the court by which the same was issued. The authority of other legal representatives of the inventor must be similarly established. If the certificate is not in the English language, an English translation is also required.

Alternatively, section 409.01(a), *Prosecution by Administrator or Executor*, of the MPEP details another way to meet the requirement and states, in part:

If a court certificate is not available, then a legal memorandum prepared and signed by an attorney at law familiar with the law of the jurisdiction involved may be submitted to demonstrate that the persons signing the declaration on

behalf of the deceased inventor are all the heirs of the deceased inventor and are authorized to act on behalf of the deceased inventor. A copy (in the English language) of any statute or court decision relied upon should be made of record.

CONCLUSION

The papers filed under 37 CFR 1.42 are **ACCEPTED**.

Proof of the authority of the legal representatives in compliance with 37 CFR 1.44 **MUST** be submitted before the grant of a patent. It is the responsibility of the patent examiner of the application to ensure that proof of authority of the legal representatives has been submitted, and to determine whether the proof of authority is sufficient. If after reviewing the submitted proof of authority the patent examiner ultimately determines that the authority to execute the application does not lie with the person(s) who executed the oath or declaration of the inventor on behalf of the deceased inventor is insufficient, the application **MUST** be forwarded to the PCT Legal Affairs Division.

Applicants have completed the requirements for acceptance under 35 U.S.C. § 371(c). The application has an international filing date of 03 October 1997, under 35 U.S.C. 363, and a 35 U.S.C. 102(e) and 371(c) date of **24 September 1999**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



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